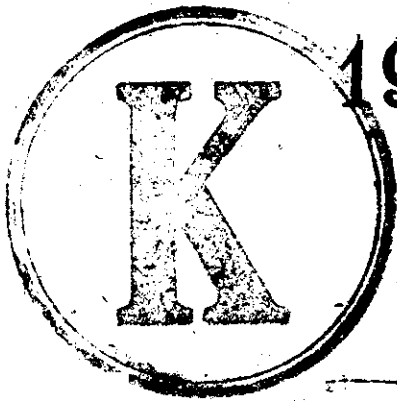




1952

P 72F

File No. O. Village
Panch/52
Legal Department
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Subject:— Opinions under the
Bombay Village Panchayat
Act, 1933

File No.

O. Village Panch/52

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C O N T E N T S.

Legal Department File No. O. Village Panchayat/53.

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C O N T E N T S.

Legal Department File No. O. Village Panchayat/52

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C O N T E N T S.

Legal Department File No. O.Village
Panchayat/52.

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Sr. No.	R.I. / O.No.	Subject	Pages.
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31.	<u>21532</u> <u>13/9/52.</u> <u>18081/A</u> <u>31/10/52.</u>	Whether under clause (f) of Section 26A(1) of the B'bay Village Panchayat Act 1933 it would be legally competent for a Village Panchayat to provide from its fund forfilling of cattle troughs.	101.
32.	<u>26486</u> <u>4/11/52.</u> <u>18741</u> <u>11/11/52.</u>	Whether the Village Panchayat can contribute under Section 26-A of the Village Panchayat Act 1933 to the maintenance of a library within its jurisdiction.	103.
33.	<u>27939</u> <u>19/11/52.</u> <u>20161/A</u> <u>2/12/52.</u>	Whether tax can be levied in the Village by the Village Panchayat under section 89(2) of the B'bay Village Panchayat Act 1933.	105-107.
34.	<u>17698/A</u> <u>25/10/52.</u>	Whether there would be legal objection to accepting the ballot paper as valid if it bears any mark other than that of a cross.	109.
35.	<u>21523/A</u> <u>20/12/52.</u>	B'bay Village Panchayat Act 1933 .. Section 9(1) Village Panchayat Talegaon.	111-115.

Legal Department.

Bom. Village
Panchayats Act
1933.
Sec. 23(1)

Section 23(1) of the Bombay Panchayats Act, 1933 provided that "any vacancy of which notice shall have been given to the Collector in the prescribed manner due to the disablement, death, resignation, disqualification, absence without leave or removal of a sarpanch or a deputy sarpanch or member, shall be filled, by the election of a sarpanch or deputy sarpanch or a member, who shall hold office so long only as the sarpanch, deputy sarpanch or member, in whose place he has been elected would have held office if the vacancy had not occurred :

Provided that if no member is so elected within four weeks from the date on which notice of the vacancy is given to the Collector, the standing committee of the district local board shall, within the next eight weeks, appoint a person who would have been qualified to be elected. If the standing committee of the district local board fails to make any such appointment within the time specified, the Collector shall make such appointment and the person so appointed shall be deemed to have been duly elected under this sub-section." Section 108(1)(d) provides that the State Government may by notification in the Official Gazette make such rules under section 23, regulating the manner in which notice of a vacancy in the office of a sarpanch, deputy sarpanch or members of a panchayat shall be given." It appears that no rule has been framed by Govt. prescribing the form of notice of a vacancy to be given under Sec. 23. No doubt, sec.23(1) does contemplate that a notice of a vacancy is required to be given to the Collector but such vacancy should be due to the disablement death, resignation, disqualification, absence without leave or removal of a sarpanch or a deputy sarpanch or a

or a member and in all cases other than disqualification it appears that a notice of the vacancy to the Collector would be absolutely necessary since in those cases the Collector would not be aware of the vacancy. But in cases of disqualification arising under sections 9 and 9A it appears that the Collector would be quite aware of such vacancy and no special notice would be necessary. In this particular case, the Collector passed the order of disqualification under section 9A(b) on 16-5-51. However, the disqualified member, Shri Dharaihai applied to Govt. for revising that order of the Collector and Government finally confirmed the Collector's order on 8-8-1951. The period of 4 weeks within which the Collector should fill the vacancy under the proviso to sec. 23(1) would begin from 8-8-51 on which date Government passed the order. The Collector's view that the period of 4 weeks would commence from the date of his order i.e. 16-5-51 is not correct. However, as the Collector as well as the Standing Committee of the District Local Board failed to fill the vacancy as provided in the proviso to sec. 23(1) within the prescribed period the only course open would be to ask the Collector to make the appointment under the latter part of the proviso to section 23(1).

14/-

10/1.

Additional Secretary to Government.

U.R. to L.S.G. & P.H.D. No. 303, dated 11th January 1952.

Local Department.

The Director of Local Authorities, Central Division, states that the elections of the nine Village Panchayats held in November 1950 are not contrary to B.L.A.A.F. and R. of R.S. Act, 1950, and the only defect is that reconstitution was implied sanctioned by the Collector instead of by the Commissioner or the Director of Local Authorities. The question for R.L.A.'s consideration is whether elections already held are invalid.

Section 6(1) of the Bombay Village Panchayats Act, 1933, as amended by section 7(2) of the Bombay Local Authorities Adult Franchise and Removal of Reservation of Seats Act, 1950 provides that a panchayat shall consist of such number of elected members, not being less than seven or more than fifteen in number as the Collector may determine. In any such panchayat such number of seats shall be reserved for the representatives of women, Scheduled Castes and Scheduled Tribes as may be prescribed by the State Government under section 108(1)(b). Under clause (b) of section 108(1), the State Government may, by notification in the Official Gazette, make rules under section 6 prescribing the number of seats to be reserved for the representatives of women, Scheduled Castes and Scheduled Tribes in each village panchayat. As under section 112(1) the powers of the State Government to make rules under clause (b) of section 108(1) have been delegated to Director of Local Authorities. (vide H. & L.G. Deptt. Notification No. S. 180 dated 7th November 1949), the Director of Local Authorities, Central Division, by means of notification published in the Official Gazette, should have made the relevant rules prescribing the number of seats to be reserved for the representatives of women, Scheduled Castes and Scheduled Tribes in respect of each village
MR. 15/5.

~~panchayat. It, however, appears that instead of revising~~

panchayat. It, however, appears that instead of revising the constitution of the village panchayats in light of the instructions contained in Local Self Government & Public Health Department Circular No. 2565/53, dated 20th May 1950, and submitting his proposals to the Director of Local Authorities, Central Division, for sanction, the Collector of Nasik himself fixed the number of seats to be reserved for the representatives of women, Scheduled Castes and Scheduled Tribes in each panchayat. Since the number of seats reserved for women, Scheduled Castes and Scheduled Tribes were not prescribed by the Director of Local Authorities, but by the Collector the constitution of these Panchayats would be defective. Since the election have been already held and the Panchayats have been functioning it would not be feasible to disturb the position. To regularise the matter the Director of Local Authorities may by a notification retrospectively accord his approval to the reservation of seats.

16/-

12/1.

Additional Secretary to Government.

U.R. to L.S.G. & P.H.D. No. 486 dated, 14th January 1953.

Office of the R. L. A.

R.L.A.'s

The question for consideration is whether the Gratuity Rules framed by the Collector of Kanara prior to the coming into force of the Village Panchayats Provident Fund Rules, 1951, are ultra vires the provisions of the Bombay Village Panchayats Act, 1933.

2. Under section 33(1) of the Bombay Village Panchayats Act, 1933, as amended by section 19 of the Bombay Act XVIII of 1939, the powers, duties, remuneration and conditions of service of the secretary of a panchayat shall -1, subject to the provisions of sub-section (2), be as may be prescribed. Under clause (el) of section 108(1) Government framed rules prescribing the powers duties, remuneration and conditions of service of the secretary of a panchayat. Rule 3 of these Rules provides that the conditions of service of the secretary shall be determined by Government at the time of his appointment according to the nature of his appointment but in regard to this matter the Bombay Civil Services Rules as amended from time to time shall apply so far as they are consistent. By G.D. Notification No.S-174/10(a) dated 8th November 1941 issued under section 112(1), Govt. delegated to each Collector the power to make rules not inconsistent with the rules made by Government under clause (el) of section 108(1) prescribing the remuneration, conditions of service, etc. of the secretaries of the panchayats in his district. Accordingly the Collector of Kanara framed the rules in question in the year 1943 for payment of gratuity to the secretaries. These rules, not being inconsistent with the rules framed by Government under G.D. Notification No.S-174/10 dated 31st July 1943, were intra vires and valid.

MBR.
18/6.

Section 85 has been further amended by section 12 of the Bombay Village Panchayat Amendment Act, 1947, and after the amendment of that section Government framed the Bombay Village Panchayats Secretaries (Conditions of Service) Rules, 1948, in supersession of the various notifications issued by Government, including the G.D. Notification No. S-174/10(a) dated the 8th November 1941, whereby the powers were delegated to the Collector to make rules. As a consequence thereof, the Gratuity Rules framed by the Collector of Kanara lapsed with effect from the 24th November 1948.

3. The Bombay Village Panchayats Provident Fund Rules, 1951, are framed by Government under clause (rr) of section 108(1) of the Bombay Village Panchayats Act, 1933, and are distinct and separate from the Bombay Village Panchayats Secretaries (Conditions of Service) Rules, 1948, framed by Government under clause (el) of section 108(1) of the Act,

12/-

11/2.

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No. 2512, dated the 15th
February 1952.

MBB.
15/6.

Office of the R. L. A.

Functioning of
Village Panchayat.
 R.L.A.'s opinion
 No. 10593
 dated 2-12-1940
 and Additional
 Secretary's opinion
 No. 7925 dated
 19-5-1951.

The Director of Local Authorities has failed to notice the correct statutory position in case of village panchayats. Additional Secretary's opinion No. 7925 dated the 19th May 1951 has no application in the case of a village panchayat and in view of the express provisions of section 6(2) of the Bombay Village Panchayats Act, 1933 a village panchayat can begin functioning even if the remaining members are not elected as pointed out in R.L.A.'s opinion No. 10593 dated the 2nd December, 1940.

10/-

14/3.

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No. 4013, dated the
 15th March 1952.

MSB.
 15/6.

Office of the R. L. A.

The question whether the offence of which Shri Shama Lakha Baria was found guilty, involved moral turpitude, is immaterial as the sentence imposed on him having expired by the time he was elected to the Village Panchayat in 1951 at the general election, he was free from the disqualification, if any, under section 2(o) of the Bombay Village Panchayats Act, 1933.

Id/-

13/3

Remembrancer of Legal Affairs.

U.R. to L.S.G. and P.H.D. No. 3956, dated the
14th March 1952.

Office of the R. L. A.

Bom. Village
Panchayats Act,
1932.
Secs. 26(1) -
Bom. Markets and
Fairs Act, 1862
section 1.
Patan Village.

It appears that Sardar B.N. Patankar, who is the Dumatdar of Patan, has been holding a weekly bazar in his malki Survey number since 1925 and has been levying ground rent for occupying stalls and shops thereon. He has also been collecting taxes on goods (octroi) and on the sale of cattle since prior to 1940. He contends that as he is the proprietor of the village he is not liable to taxes of the village panchayat such as house tax and that the roads thereof vest in him and therefore the village panchayat has no right even to repair them. In these circumstances, the Collector of Satara North has raised the following questions for the R.L.A.'s opinion:

- (1) The holding of the bazar by the Dumatdar on the present site since 1925 without obtaining the District Magistrate's written order as required by section 1 of the Markets and Fairs Act;
- (2) The Dumatdar's action in collecting taxes on goods and sale of cattle for many years past before 1940 and also since the formation of the V.P. in 1940;
- (3) The remedies for stopping the illegal recoveries and the action for illegal recoveries made so far;
- (4) The Dumatdar's resistance to the village panchayat in assuming the control of bazar and to repair roads;
- (5) The legality of opening bazar on another site especially when Inamdar is likely to oppose it, in view of the harassment to the people and loss to the village panchayat on account of the bazar site.

Question No. 1. Under section 1 of the Bombay

Markets and Fairs Act, 1862, no person can establish a new market or a fair without the permission in writing from the Magistrate of the District. It is presumed that the Dumaldar opened the present market without the prior sanction of the District Magistrate. If so, he has committed an offence and shall be liable to be prosecuted for the contrvention of the provisions of the Bombay Markets and Fairs Act. The fact that he opened the market in 1925 and no action has since been taken against him would not exempt him from prosecution under the Act. The power vesting in the Panchayat under section 26(1)(h) of the Bom. V.P. Act impliedly prohibits the holding of bazars by private persons. Before prosecuting the Dumaldar under the Bombay Markets and Fairs Act a notice should be given to him to stop holding the bazar and if he does not pay any heed to it, the prosecution should be launched.

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Question Nos. 2 and 3. - The Dumaldar has no right to levy any octroi nor any tax on the sale of cattle. Under Article 265 of the Constitution no tax shall be levied or collected except by authority of law which in its context means law made by the Legislature. The Dumaldar has no authority of law to levy and collect octroi and sales tax. The Bombay Haqqa Prohibition Act, 1839 has been repealed and there is no statutory provision imposing any penalty on the levy and collection of any taxes save by authority of law. It is open to the persons from whom such tax is demanded to resist recovery. Under these circumstances, the villagers should be informed that the Dumaldar has no right to levy and recover such taxes and it would be open to them to refuse to pay them. They should further be told that in respect of the past recoveries it would be competent for them to sue the

MSR. 15/6.

Dumaldar for refund thereof provided the claim is in time.

Question Nos. 4 & 5. It appears that the present weekly bazar is held in the Malki survey number of the Dumaldar. As pointed out by the R.L.A. in his opinion No.6433 dated 11th June 1949, the power to levy fees on market is wide enough to include both public and private market bazars in view of the provisions of section 26(1) (h) and also rule 35; and that so long as the bazars are held within the limits fixed under rule 35 they would come within the scope of rule 34 and the person occupying open places and plots of open land therein for the purposes of shops, booths, stalls etc., will be required to pay fees leviable under that rule and the markets or bazars contemplated by these rules need not necessarily be maintained or organized by the village panchayat. It would, therefore, be competent for the village panchayat to bring the bazar in the malki survey number of the Dumaldar within the scope of rule 34 by extending the limits under 35. If it is so done, the village panchayat can levy the bazar tax even though the malki survey number where the bazar is held belongs to the Dumaldar. If the Dumaldar obstructs the levy of the tax in such bazar he would be liable to be prosecuted for obstruction under the Indian Penal Code inasmuch as the obstruction would be to a public servant (see section 114 of the Bombay Village Panchayats Act, 1933). It would also be competent for the village panchayat to open a new bazar on another site for it is one of the duties of the village panchayat under section 26(1)(h) to provide for bazars.

The Dumaldar is bound to pay the house tax levied by the village panchayat and if he resists, recovery can be enforced under sections 91 and 92 of the Bombay Village Panchayats Act. So far as the public roads are concerned

there is no provision in the Act that they vest in the village panchayat, but under section 26(1)(c) it is the duty of the village panchayat to construct maintain and repair public roads, drains bunds, and bridges, and under the proviso thereto if the roads drains, bunds and bridges vest in any other public authority, such works shall not be undertaken without the consent of such authority. Public roads in the village would certainly fall under clause (c) of sub-section (1) of section 26 of the Act and it would be competent for the village panchayat to carry out the repairs even though the Dumatdar is the proprietor of the village. If he obstructs he may be prosecuted.

Id/-

2/4.

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No. 324-Confl., dated the

4th April 1952.

MSR.
15/6.

Office of the R. L. A.

Bombay Village
Panchayats Act, 1933.
Rules 16 & 17 of the
Bombay Village
Panchayats Election
Rules, 1948.

Though Shri Ranchhod Kagan, a candidate in Ward C, was assigned the symbol of cycle by the Returning Officer under rule 16 of the Bombay Village Panchayats Election Rules, 1948, in the voting papers as finally printed under rule 17 the symbol 'horse' was printed against his name through inadvertance. Even in the specimen voting papers posted outside the polling station under rule 18 for the guidance of the voters, the symbol 'horse' was printed against the name of Shri Ranchhod Kagan. However, Shri Ranchhodbhai noticed the error on 15th October 1951, the date of election, and he made objection in writing to the Presiding Officer. The Presiding Officer, advised him to obtain orders of the Returning Officer. Subsequently, he withdrew his objection and stated that he accepted the symbol 'horse' as printed against his name in the voting papers. It is thus evident that Shri Ranchhodbhai had not only the knowledge about the irregularity or error but he acquiesced in the defect. With such knowledge, he should have given proper guidance to the voters and removed any misunderstanding. It cannot, therefore, be held that the irregularity or error has affected the result of the election as required by section 9(1) of the Bombay Village Panchayat Act and the election cannot therefore, be declared invalid.

16/-
 16/4.

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No. 5734, dated the

17th April 1952.

MHR.
 15/6.

Office of the R. L. A.

Under paragraph 1 of section 6(1) of the Bombay Village Panchayats Act, 1933, it is provided that such number of seats shall be reserved for the representation of Scheduled Castes and Scheduled Tribes as may be prescribed by the State Government under clause (b) of sub-section (1) of section 108, provided that no such seat shall be reserved for the representatives of Scheduled Castes and Scheduled Tribes in any Panchayat unless the State Government is of the opinion that the reservation of such seats is necessary having regard to the population of such castes and tribes in the village. Presumably, the two seats were reserved in accordance with this provision, after the State Government formed the opinion that reservation was necessary having regard to the population of such castes and tribes in the village which was then reported to 616. It now transpires that there was no population of such castes and tribes in the village. It would, therefore, follow that the ~~an~~ opinion formed by Government was without foundation, and the reservation would be illegal as being contrary to the proviso quoted above. The other eleven seats have been duly filled. The remaining two seats ought never to have been created and reserved, and in any case it is not possible to fill them by election or by appointment under sub-section (3) of section 6. It is an established maxim that lex non cogit ad impossibilia. The purpose and the ~~formalities~~ formalities prescribed by the statute having been rendered impossible and the reservation itself being illegal in its inception, no question of filling the seats can arise. The reservation is to be totally ignored as a nullity, and since the remaining seats have been duly filled and exceed the

27
the number of seven which is sufficient under
sub-section (2) of section 6 for the valid
constitution of a ~~pan~~ panchayat, the panchayat so
constituted cannot be treated as invalid, and,
therefore, the elections need not be declared
invalid.

16/-

9/5.

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No. 7812, dated

9th May 1952.

MSR.
15/6.

Office of the R. L. A.

The questions referred to the R.L.A. for advice are :

- (1) Whether a temporary servant of the Central Government is not eligible to become a member of a village panchayat under clause (j) of section 8 of the Bombay Village Panchayats Act, 1933;
- (2) Whether after the Prant Officer, Chikodi, has passed orders on appeals preferred to him under rule 12 of the Bombay Village Panchayat Election Rules, 1948 by Shri Pachhapure and Talwar against the decision of the Returning Officer, the Collector can interfere and review the Prant Officer's decision.

2. Question No.(1).- Under clause (j) of section 8 of the Bombay Village Panchayats Act, 1933, no person may be a member of a panchayat who is a servant of the Government. The word "Government" was substituted for the word "Crown" by the Adaptation of Laws Order, 1950. "Government" includes both the Central Government and the State Government: see section 3(23) of the General Clauses Act, 1897. It would follow, therefore, that a servant of the Central Government would be ineligible. It would not make any difference to that disqualification whether the servant is temporary or part-time (R.L.A's opinion No.15498 dated 6-11-1950). The view taken by the Prant Officer was, therefore, correct,

3. Question No.(2).- Presumably the Prant Officer in this case was appointed as "other officer" as required by rule 10(2) of the Bombay Village Panchayat Election Rules. The combined effect of rules 12 and 13 of MSR. 16/6.

these Rules is that his decision would be final. Sub-sections (1) and (1A) of section 9 are not available for the purpose of revising that decision (R.L.A.'s opinion No.5692 dated 26th April 1950). The general powers under section 107 which are analogous to the powers contained in section 132 of the Bombay Local Boards Act cannot also be availed of as giving the authority to revise the decision by way of appeal or revision : see Advocate General's Opinion No. 4 of 1949, dated 23.3.1949 sent with R.L.A.'s U.R. No. 196-Conf1. dated 23.3.1949.

4. The Collector's order revising the Prant Officer's order is, therefore, illegal both on merits and on the ground of incompetency.

1A/-

9/5.

Membraneer of Legal Affairs.

U.R No. 7904, dated 12th May 1952 to L.S.G.A P.H.D.

Office of the R.L.A.

Bombay Village
Panchayats Act,
1933.
Sects. 4, 28B
and 105(b)

The Collector of Surat has proposed that the properties vested in village panchayats under G.R., L.S.G & P.H.D. No.S.251 dated the 9th June 1950, issued under section 28-B of the Bombay Village Panchayats Act should revert to Government on the area ceasing to be a village by virtue of a notification under section 4. R.L.A. is requested to advise whether the proposal would be legally feasible.

2. Under section 28-B of the Bombay Village Panchayat Act, 1933, whereunder the aforesaid 22 G.R. has been issued by Government, Government may, subject to such ~~various~~ conditions and restrictions, as it may think fit to impose, vest in a Panchayat open sites etc. in a village vesting in Government. Section 105(H) provides that on any area ceasing to be a village by virtue of any notification under section 4, the unexpended balance of the village fund and the property in the panchayat shall vest in the District Local Board to be utilised for the benefit of the inhabitants of the area as the District Local Board may think fit. Reading these provisions together, it would be apparent that the property transferred by Government under section 28-B would vest in the District Local Board on the area ceasing to be village, and such property will have to be utilised by the District Local Board for the benefit of the inhabitants of the area. Consequently on any area ceasing to be village, by virtue of any notification under section 4, the property transferred by Government under section 28B will not revert to Government can claim resumption of this property only when there is a breach of the condition ~~is~~ attached under section 28B. The proposal of the Collector of Surat would not, therefore, be legally feasible.

12/-
12/6.

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D., No.10025, dated the
16th June 1952.

Office of the R.L.A.

Bombay Village
Panchayats Act,
1933.

Section 89(1)&(2)

and
Rules made under
section 108(1)(m).

The first question for consideration is whether under rule 14 of the Rules framed under clause (m) of sub-section (1) of section 108 of the Bombay Village Panchayats Act, 1933, a building can be said to be "vacant and unproductive of rent", even though some household articles or even a piece of firewood may be lying there after its occupant has left the premises.

Rule 14 of the said Rules provides :

"14. Where any building or land which is assessed to a rate payable by the year has remained vacant and unproductive of rent throughout the year or portion of the year for which the rate is leviable, the Panchayat shall remit or refund the amount of the rate proportionate to the period of vacancy:

Provided that no such remission or refund shall be granted unless the building or land as aforesaid is vacant and unproductive of rent for not less than sixty consecutive days and that notice in writing of the fact of the building or land being vacant and unproductive of rent has been given to the Sarpanch:

Provided further that no remission or refund shall be granted for any period previous to the date on which such notice is given to the Sarpanch."

It is clear from this rule that the remission or refund is admissible only in cases of such building or lands as have remained vacant and unproductive of rent for not less than sixty consecutive days whether a particular building is vacant and unproductive of rent is always a question of fact and has to be determined with reference

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to the circumstances of each case. In his opinion No. 2143 dated the 15th September 1926, the R.L.A. in interpreting the analogous provisions of section 69 of the Bombay District Municipal Act, 1901, observed: "A building cannot be said to be vacant or empty if it contains trade fixtures; nor can an empty building be said to be vacant if it is kept ready for use. A bungalow which is kept furnished by the owner and ready for occupation cannot be treated as "vacant and unproductive ^{of} rent" even though it is not actually occupied." (See also Commissioner of Income Tax vs. the Raja of Parlakimedi 49 Mad. 23 and Maharaja of Darbhanga vs. Commissioner of Income Tax of Bihar and Orissa, I.L.R. Pat.261). It would therefore appear that if the household articles are kept in the building for ready use when the occupant returns, it would mean that the premises are kept ready for use and consequently would not be entitled to exemption ^{rule} und-gr/14 but the presence of merely a pile of firewood would afford no such indication and rule 14 will be attracted. The view taken by the Director of Local Authorities, N.D. in this behalf is correct.

2. The second question for consideration is whether it would be competent for a panchayat to levy a house tax on (roofs) premises where machinery is run by steam oil or electric power for domestic and agricultural purposes and which are excluded from taxation under clause (vi b) of sub-section (2) of section 69 of the Bombay Village Panchayats Act, 1935.

Section 69(1) of the Bombay Village Panchayats Act provides that every panchayat shall levy a tax upon the owners or occupiers of houses etc. in such manner and at such rates and subject to such exemptions as ^{may} be prescribed. Prescribed means prescribed by rules. (See

section 8(8)). Under section 108(1)(m) Rules have been made in this behalf. Under rule 1(c) of these Rules a house has been defined to mean any building or set of buildings within the same enclosure and used by the same occupier. "What is a building must always be a question of degree, and circumstances; its ordinary and usual meaning is a block of brick or stone work, covered in by a roof." (See Ayer's Law Lexicon p.159).

Ordinarily a structure wherein machinery is housed would be a "house" within the meaning of rule 1(c) of the Rules and liable to be taxed. However the Act makes a distinction between a tax on houses and a tax on premises where machinery is run and since a special provision is made in section 89(2) (vi b) whereunder premises where machinery is run are made liable to taxation such premises would be outside the purview of section 89(1). These being taxation provisions will have to be strictly construed and in favour of the subjects. The intention of section 89(2) (vi b) is that a tax on such premises should not be levied. Such a tax would not also be covered by clause (vii) of section 89(2). (See R.L.A's Opinion No.8973 dated the 29th May 1952.)

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19/6.

Remembrancer of Legal Affairs.

U.R. to L.S.G.A P.H.D. No. 10261, dated the 20th June

1952.

MSR.
16/6.

Office of the R.L.A.

Only two points are raised by the Local Self Government and Public Health Department for R.L.A.'s consideration. These are : (1) Whether exemption can be granted retrospectively, and (2) whether the Explanation to rule 18 of the Octroi Rules made under the Bombay Village Panchayats Act, 1933, can be amended so as to extend the period of export to six months.

No exemption can be granted retrospectively. Explanation to rule 18(2) of the Octroi Rules framed under the Bombay Village Panchayats Act, 1933, provides that for the purposes of this rule goods shall be deemed to be imported for consumption, sale or use into the octroi limits unless they are exported within three days of their import. There appears no legal objection to amending this Explanation to the effect ^{that} goods imported within the octroi limits shall be liable to octroi duty unless they are exported within six months of their import. Whether this Explanation should be amended as proposed is a matter for the administrative Department to decide; the amendment does not prima facie appear expedient.

Id/-

16/6.

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No. 10085, dated the

17th June 1952.

MSR.
16/6.

Office of the R.L.A.

, The question for consideration is that when on the expiry of the terms of office of the members of a Nyaya Panchayat another Nyaya Panchayat is constituted under section 37(1) of the Bombay Village Panchayats Act, 1933, whether it is necessary that such newly constituted Nyaya Panchayat should be re-invested with judicial powers under section 37(2) of the Act.

2. Under sub-section (1) of section 37 of the Bombay Village Panchayats Act, 1933, every panchayat shall at its first meeting elect out of its members in the prescribed manner five persons for the purpose of constituting a nyaya panchayat. Sub-section (2) provides that the ^{five} ~~five~~ persons so elected (that is, elected by the village panchayat in the manner prescribed) shall constitute a nyaya panchayat and the State Government shall direct that such nyaya panchayat may exercise all or any of the judicial powers which may be conferred on the nyaya panchayat under this Act: Provided that the State Government may at any time, by notification in the Official Gazette, withdraw all or any of the judicial powers conferred on a nyaya panchayat, if in the opinion of the State Government ~~any such~~ such nyaya panchayat has been incompetent in the exercise of, or has been guilty of the abuse of the said powers. The nyaya panchayat constituted under the Village Panchayats Act is a court. Section 58A provides that a nyaya panchayat newly ~~constituted~~ constituted on the expiry of the terms of office of the members of another nyaya panchayat or a nyaya panchayat newly constituted on the dissolution of another nyaya panchayat under section 106, shall hear and dispose of all suits, cases and proceedings pending before the latter at the date of expiry of such term
RBR. 16/6.

or at the date of such dissolution. This provision contemplates that a newly constituted nyaya Panchayat is a successor of the nyaya panchayat whose terms of office expired and the former body is, therefore, authorised to hear and dispose of all cases and suits pending before the nyaya panchayat at the date when its terms of office expired or when it was dissolved. The words "shall hear and dispose of etc." appear to imply that no fresh conferment of judicial powers on a newly constituted nyaya panchayat is necessary under section 37(2).

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25/6.

Remembrancer of Legal Affairs.

U.R. to H.D., No. 10585, dated the 26th June 1952.

Office of the H.L.A.

Bombay Village
Panchayats Act,
1951, Sec. 33.

Seen and returned.

Appointment
of a common
Secretary.

2. Under section 33 of the Bombay Village Panchayats Act, 1951, as it stood before it was amended by the Vill. Panchayats (Amendment) Act, 1951, every Panchayat was required to appoint a Secretary. After the Act was amended by the Bombay Village Panchayats (Amendment) Act, 1951, which came into force on 18th April 1951, one Secretary could be appointed for Panchayats not exceeding 3 in number, provided the villages are within a distance of 3 miles from each other and the sanction of the State Government for such appointment is obtained. The fact that a common Secretary appointed for three Panchayats in the present case prior to 18th April 1951 has been continued implies the consent of all the 3 village panchayats for such appointment. To regularise the position, what is needed is only Government's sanction. Government may, therefore, give sanction to the appointment of a common Secretary for the three villages with effect from 18th April 1951 from which date the Bombay Village Panchayats (Amendment) Act, 1951, came into force.

Id/-

7/7.

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No. 11190 dated the 7th July 1952

MSR.
16/6.

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13072
2/7/52.

Attention is invited to R.L.A.'s opinion 10095 dated 17-3-1952. The Under Secretary, L.S.G. and P.H.D. states that the Explanation to rule 18(2) will have to be amended so as to fix a reasonable time limit for the export of goods instead of three days to cover such ^{at} cases; and ^h perhaps no ~~any~~ discrimination could be made in the case of Tata Iron and Steel Company by adding a proviso to Explanation to rule 18(2). He suggests that there are two courses open, namely, either to shift the godown outside the Panchayat limits, or to fix a reasonable period for export of goods instead of three days.

The view expressed by the Under Secretary, that no discrimination could be made in the case of Tata Iron and Steel Company is correct. In R.L.A.'s opinion No.10095 dated 17-6-1952 it is pointed out that there appears no legal objection to amending the Explanation to rule 18(2) to the effect that goods imported within the octroi limit shall be liable to octroi duty unless they are exported within six months of their import, and it was further suggested that it was a matter for the Administrative Department to decide whether the Explanation should be so amended. It is now proposed to amend the Explanation to the effect that the goods imported within the octroi limits shall be liable to octroi duty unless they are exported within two months of their import. There appears no objection to amending the Explanation as proposed. The papers may be "seen and returned."

14/- D.S. (Civil) as at 'A'. 14/- R.T.K. 4/7.
S.R. to L.S.G. & P.H.D. No-11213 of 7/7/52.

Office of the R.L.A.

Rule 12(1) of the Bombay Borough Municipalities Election Rules 1950 provides that a general municipal election shall be held between such hours and on such dates, and at such place or places as may be fixed by the Collector. The Collectors shall fix the date, hours and place or places for the following stages of the election, namely (i) the nomination of candidates and the scrutiny of nominations, (ii) recording of votes, and (iii) counting of votes. Sub-rule (2) of that rule requires that written notice of such election shall be given and published not less than thirty clear days before the date fixed for the election. Although the expression "notice of ~~xxx~~ such election" can, on a literal interpretation, be confined to the notice of the election contemplated by the first part of Rule 12(1), the fact that sub-rule (1) covers also the various stages and the marginal note of that sub-rule also speaks of "fixin-g of stages of election" would show that the notice is intended to notify not only the date and place of the actual election (i.e. polling) but also all the anterior stages. Polling i.e. recording of votes has been included as one stage of the election. Even on ordinary principles of election law, the notice must contain intimation to the public and the voters of these various stages. There is no separate provision in the Rules for giving notice of these stages. It follows, therefore, that the notice contemplated by sub-rule (2) is a composite notice of the election as such and also of the various stages. Such notice has been given and admittedly not less than thirty clear days before the date fixed for the

election proper. Owing to the intervening stay by Government, the two final stages viz. recording and counting of votes remain to be completed. The real question is whether the dates already fixed and notified for these stages can be ^{al}tered or whether a fresh notice ought to be given fixing new dates for all the stages from the beginning. Adherence to the dates already notified for the two final stages of the election became impossible owing to the stay ordered by Government, but that stay has not operated to cancel what has already been accomplished. When adherence to the time table already notified becomes impossible in circumstances which cannot be controlled, the authority responsible for framing the time table has inherent powers to alter it, so long as such alteration is notified and the parties concerned receive due notice. It does not seem necessary to start the process of election de novo. As a matter of caution the dates fixed should be beyond the period of 30 days from the date when the new notification is issued.

14/-

21/5.

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D.No. 8595, dated the

22nd May 1952.

MSR.
16/6.

Office of the R.L.A.

Sub-section (1) of section 110 of the Bombay Village Panchayats Act, 1933, provides that every member of a Panchayat shall be personally liable for the loss, waste, or misapplication of any money or other property of the panchayat, to which he has been a party, or which has been caused or facilitated by his misconduct or gross neglect of his duty as a member. The liability imposed upon by this provision being of a personal nature, would continue even after the supersession or dissolution of a panchayat; Provided it can be proved that the case falls within subsection (1) of section 110. The personal liability of the Sarpanch would then continue and it would be feasible to recover the loss to the village fund from him as proposed by the Collector.

14/-

27/5.

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No. 8906, dated the

28th May 1952.

Office of the R.L.A.

Bombay Village Pancha-
yats Act, 1933 -
sec. 89(2)(vii)

Tax on Milk Sanchas.

Clause (vib) of sub-section (2) of section 89 of the Bombay Village Panchayats Act, 1933, (Bom.VI of 1933), empowers the Panchayat to levy a tax on premises where machinery is run by steam, oil or electric power for any purpose other than a domestic power for any purpose. The proposal now is to levy a tax on premises where machinery is run by manual labour, and the question referred to the R.L.A. for opinion is whether such tax is covered by clause (vii) of sub-section (2) of section 89. Clause (vii) of sub-section (2) of 89 empowers the Panchayat to levy any other tax (not being a toll on motor vehicles or trailers, save as provided by section 14 of the Bombay Motor Vehicles Tax Act, 1936) which the State Legislature has under the Constitution power to impose in the State and which has been approved by the District Local Board and sanctioned by the State Government. This clause contemplates a tax which is distinct in nature from any of the taxes referred to in clause (i) to (vi e) of sub-section (2). A tax on premises where machinery is run by manual labour would not be a tax distinct from the tax referred to in clause (vi b) since it will be a tax on premises although machinery therein is run by manual labour. Section 89 of the Act being a taxing provision will strictly be construed in favour of the subjects and therefore, it is ~~safer~~ safer to hold that a tax on premises where machinery is run by ~~MAN.~~ 14/6.

manual labour is not covered by clause (vii). To achieve the object in view, it would be desirable to amend the Act. A tax on premises would be referable to Entry 49 in List II of the Seventh Schedule to the Constitution of India and therefore, a provision for the levy of such tax would be within the field of the State Legislature.

Id/-

28/5.

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No. 8973, dated the

29th May 1952.

MFR.
16/5.

Office of the R.L.A.

The view taken by the Local Self Government and Public Health Department does not appear to be correct. Under rule 3(2) of the Bombay Village Panchayats Election Rules, 1948, written notice of the election programme is required to be given and published in the regional language of the village not less than 45 clear days before the date fixed for the election and copies of the notice shall be affixed at the village chavdi or at the village panchayat office or at any other public place appointed by the Mamlatdar or Mahalkari in this behalf. "Village chavdi" as defined in rule 2(8) includes a place deemed to be chavdi under the Bombay Land Revenue Code, 1879. "Chavdi" as defined in section 3(8) of the Bombay Land Revenue Code ~~means~~ means, in any village in which there is no chavdi, such place as the Collector may direct shall be deemed to be the chavdi for the purposes of this Act. It is true that the Collector ~~may direct that the Patil's house should be deemed to be chavdi for the purposes of the Bombay Land Revenue Code.~~ has not directed that the Patil's house should be deemed to be chavdi for the purposes of the Bombay Land Revenue Code. But the definition of chavdi in rule 2(8) of the Bombay Village Panchayats Election Rules is inclusive and it may include some other place which is not deemed to be a chavdi under the Bombay Land Revenue Code. Chavdi seems to be a Marathi word and means the same as chauri. It means a place where villagers assemble (See Baden Powell iii 88; see also v's Law Lexicon, p. 198). It appears from the report of the Collector that the houses ~~in~~ of the village in villages where there are no chavdis are chavdis and as such the publication of the notice at the Patil's house as was usually done might

be regarded as valid. In the absence of any chavdi, it appears that the Patil's house was considered as chavdi, that is to say, a place where the village people could assemble for any Government or public work. Consequently, there appears no legal objection to considering the Patil's house as chavdi for the purposes of rule 8(2) read with rule 2(8) of the Bombay Village Panchayats Rule, 1948.

14/-

15/7

Remembrancer of Legal Affairs,

U.R. to L.S.G. & P.H.D., No. 11814, dated the
17th July 1952.

OFFICE OF THE R.L. A.

Departmental
inquiry against
Village
Panchayats
Secretary.

Bombay
Village
Panchayats
Act, 1933,
secs. 33(1),
94(1)(b)(ii),
and 99(1).

R.L.A.'s
opinion Nos.
4630 dated
13-5-1948,
4524 dated
7-9-1937.

The view taken by the Director of Local Authorities is correct. Under Section 33(1) of the Bombay Village Panchayats Act, 1933 the Secretary of the Panchayat is a servant of the Panchayat and not of Government and it is, therefore, in the discretion of the Panchayat to decide whether or not a departmental inquiry should be held against him. Under section 94(1)(b)(ii) it is no doubt open to the Collector to require the panchayat to take into consideration any information which the Collector is able to furnish and which appears to him to necessitate the doing of a certain thing by the panchayat; but there is no ~~absolute~~ obligation on the panchayat to carry out the directions ~~in the panchayat~~ of the Collector. The Collector's directions to the panchayat in the present case to hold a departmental inquiry in the conduct of its Secretary will be relatable to these provisions, if on a consideration of the material before it, the Panchayat decides not to hold the inquiry that action on the part of the panchayat will not be illegal. Further under section 99(1) of the Act, the Collector can suspend the execution of the resolution only when the execution of the resolution is causing or likely to cause (a) injury or annoyance to the public, or (b) to lead to a breach of peace. (cf. R.L.A.'s opinion No. 4630, dated 13th May 1948; Digest of Opinions, p. 831). The conditions requisite for action under section 99(1) are not present in this case and in the circumstances, the Collector's order suspending the resolution is not warranted by law. The Director of Local Authorities may, therefore, cancel that order under section 99(3) of the Bombay Village Panchayats Act, 1933

(cf. R.L.A.'s opinion No. 4524, dated 7-9-1937;
Digest of Opinions, p. 833).

12/-

26/7.

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D.No. 12420, dated the
28th July 1952.

Office of the R.L.A.

In the first case one Shri Mallangouda Vessangouda Patil under suspension was held by the Prant Officer, Jamkhandi Division to be not disqualified to be a member of the village panchayat as a patil under suspension not being actually performing the duties of a hereditary office, would not fall under clause (j) of section 8 read with Explanation 2 thereto of the Bombay Village Panchayats Act, 1933. Against that order one Keshavchand has filed a revision application to Government. The question raised for the R.L.A.'s consideration is whether the order of the Prant Officer is correct.

2. Under Clause (j) of section 8 of the Bombay Village Panchayats Act, no person may be a member of a village panchayat or continue as such who is a servant of Government or a servant of any local authority. Explanation 2 thereto states that for the purpose of clause (j) of this section an officiating revenue or police Patil or revenue or police Patil who is an officiator under the Bombay Hereditary Officers Act, shall be deemed to be a servant of the Government, but an inferior village servant shall not be deemed to be a servant of the Government. It is true that the term "officiator" as defined in section 4 of the Bombay Hereditary Offices Act, 1874, means a person actually performing duties of a hereditary office for the time being whether he be a representative Vatandar or a deputy or a substitute appointed under any of the provisions of this Act, and Shri Mallangouda being under suspension cannot be considered as being actually performing the duties during suspension. But it appears that the definition of "officiator" in the Bombay Hereditary Offices Act cannot be imported into the Explanation 2 to clause (j) of

section 8 of the Bombay Village Panchayats Act. Explanation 2 makes a distinction between an officiating revenue or ~~revenue~~ police patil meaning thereby a stipendiary ~~revenue~~ revenue or police patil, and a revenue patil who ~~is~~ is an officiator under the Bombay Hereditary Offices Act, that is to say, revenue or police patil appointed under the Bombay Hereditary Offices Act. In the Boston Deep Sea Fishing & Ice Co. vs. Ansell 39 Chancery Division 339, Cotton L.J. observed :-

"Suspension is very different from ~~the~~ dismissal. When a man is suspended from the office he holds it is merely a direction, that so long as he holds the office, and until he is legally dismissed, he must not do anything in the discharge of the duties of the office."

It is clear from this decision that an officer under suspension would not cease to be holding the office although he is prevented from discharging the duties of that office. Applying that principle to the present case it is clear that Shri Mallangouda did not cease to be the patil of the village though under suspension. Consequently, Shri Mallangouda, though under suspension, would be deemed to be holding office of patil within the meaning of clause (j) of section 8 read with Explanation 2, and was therefore disqualified. The view taken by the Prant Officer is not correct.

3. In the second case it appears that the nomination of one Timmanagouda Vyankatgouda Patil of Galgali for election to the village panchayat was rejected by the Returning Officer, Bilgi on the ground that though Timmanagouda had resigned his post of Patilki on 29.5.1952 and handed over charge thereof to one Shri Shiddappa, his resignation was accepted on 23.6.1952, i.e., after the date of nomina-

tion, and consequently, he was deemed to be an officer on the date of nomination and was thus disqualified. The Prant Officer has confirmed this order of the Returning Officer. Shri Tammangouda has made a revision application to Government contending that his resignation of office came into effect immediately on the date on which he resigned and handed over charge to Shri Bhiddayya. R.L.A. is requested to advise whether the view taken by the Returning Officer, confirmed in appeal by the Prant Officer, is correct.

4. "The word 'resignation' is not a term of art. It only means 'giving up'. Resignation by a servant does not operate as discharging the contract by bringing it lawfully to an end, unless such resignation be accepted by the master." (See Barwell & Kar on Master and Servant -t , 353). The same principle is emphasised in A.I.R. 1924 Mad. 395, where it is held that only the acceptance of the resignation makes an office vacant and not merely the offering of the resignation. Since Shri Tammangouda's resignation was not accepted until 23rd June 1952, his office could not be deemed to have been vacant on the date on which he filed the nomination paper for election to the village panchayat. Bhiddayya was holding charge of the office as a temporary measure until the resignation of Shri Tammangouda was accepted. In these circumstances, the view taken by the Returning Officer and the Prant Officer is correct.

5. In the third case one Shri Rajesa Fakirsa Bagwan was held to be disqualified and his nomination was rejected by the Returning Officer on the ground that he was a member of the joint family the manager of which defaulted in payment of the panchayat dues. The Prant Officer held that Shri Bagwan is an independent sharer under the Mahomedan Law and his liability to pay

the tax in respect of his share being subsisting, the view of the Returning Officer is correct. Against that order Shri Bagwan has applied to Government. The question raised is whether the view taken by the Returning Officer and the Prant Officer is correct.

6. Under clause (1) of section 8 of the Bombay Village Panchayats Act, no person may be a member of a panchayat or continue as such who fails to pay any tax or fee due to the panchayat within three months from the date on or before which the amount of such tax or fee is required to be paid in the bill presented to the person under sub-section (1) of section 91. Under sub-section (1) of section 91 the bill is presented to the person liable for payment thereof. Under rule 4 sub-rule (1) and rule 7 read with rule 13 of the Rules regarding levy of the tax, the tax is leviable primarily from such person whose name has been entered in the Assessment List prepared by the village panchayat. It appears that the property in respect of which the tax has not been paid in the present case, stands in the name of the ~~man~~ brother of Shri Rajesa Fakirsa Bagwan contends that no notice was given to him for payment of the bill. There is also nothing to show that the village panchayat sought to recover the tax from Shri Rajesa. If as contended by Shri Rajesa, no bill was presented to him for the amount due as required by clause (1) of section 8 read with sub-section (1) of section 91, it cannot be said that there was any default on his part to pay the tax. He may be a sharer in the property but it is undisputed ^{that} ~~that~~ the property stands in the name of his brother who is primarily liable to pay the tax. In these circumstances, it appears that Shri Rajesa could not be disqualified and the view taken by the Returning

Officer and the Print Officer is not correct.

IA/-

11/8.

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D.No. 13163 dated the

11th August 1952.

Office of the R.L.A.

Attention is invited to R.L.A.'s opinion No. 13105 dated 19-11-1949 where the R.L.A. has opined that Home Guards ^{can} be considered to be Government servants. The legal position of a person who is a Commissioned Officer in the Territorial Army is in no way different from that of a Home Guard. The fact that Shri L.G. Thakkar gets only allowance during the period of training would not make him any the less a Government servant. Consequently on accepting the Commission in the Territorial Army Shri Thakkar becomes disqualified to be a member of Dombivali Village Panchayat under clause (j) of section 8 of the Bombay Village Panchayats Act, 1933. If he wants to resign his membership of the Village Panchayat, it is open to him so to do.

1a/-

11/8.

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D.No. 13164, dated the

11th August 1952.

13406
7/7/51.

Legal Department.

S.A.S.

The District Local Board, Dharwar organised the Fifth Industrial Agricultural and Public Health Exhibition at Dharwar in February 1950. The District Local Board contributed Rs. 1000/- towards the initial expenses and they requested the village panchayats within the district to contribute some amount. Accordingly the panchayats contributed small sums varying from Rs. 10 to Rs. 50/-. The total expenditure in connection with the exhibition amounted to Rs. 14000/- a major portion of which was realised by way of gate money and rent of stalls. Still a deficit of Rs. 1400/- had to be made good by the Board. The Special Officer for the village panchayats who inspected some of the village panchayats held that the village panchayats could not incur such expenditure under the provisions of the Village Panchayats Act, 1933 and that the amount of such contribution paid by such panchayats should be refunded by the District Local Board. Even the Director of Local Authorities, Belgaum directed the District Local Board, Belgaum, should refund the amount collected from the village Panchayats. In support of this view the D.L.A. relies upon R.L.A.'s opinion No. 7720 dated 16-5-51. The L.S.G. & P.H. Department, however, considers that the contributions so made by the village panchayats towards the exhibition could be covered by section 26(2) read with sub-clauses (d) and (e) of sub-section (1) of section 26 and consequently the question of refund by the D.L.B. does not arise. R.L.A. is requested to

advise whether the view of the L.S.G. & P.H. Department
is correct.

14/-

14/8.

D.S. (Civil) M/- R.T.K.
16/8.

U.R. to L.S.G. & P.H.D. NO. 13525 dated the 19th
August 1952.

OFFICE OF THE R.L.A.

The view taken by the L.S.G. & P.H.D. in
Paras 4 and 5 of its office note is correct.
R.L.A.'s opinion No. 7720, dated 16th May 1951
has not application to the present case.

ID/-

18/8.

Remembrancer of Legal Affairs.

R. to L.S.G. & P.H.D.No. 13525, dated the

19th August 1951

Submitted.

2. According to the election programme fixed for the general elections to the Village Panchayat Tigadi the date for the receipt of the nomination papers was fixed on the 16th February 1952 and the election was ~~fixed on the 16th February 1952 and the~~ to be held on the 25th March 1952. On the scrutiny of the nomination papers on 18.2.1952 the Mamlatdar of Sampagaon who was the Returning Officer rejected the nominations of eight of the candidates for disqualification under section 8(1) of the Bombay Village Panchayats Act. On appeal by the aggrieved persons the Prant Officer ordered the acceptance of nomination of two of the candidates and rejected the other five appeals. These five candidates have now approached Govt. for setting aside the P.O's appellate Order and a stay order has been granted by Govt. pending the disposal of their application. The particulars about these five cases are as follows:-

Name of candidate	Date of service of bill	Date fixed for payment.	Date of payment	Dt. of Nomination.
Shri V.S. Jakati	1/11/50	16/2/51	9/2/52	11/2/52
Shri M.S. Chavri.	2/8/51. 13/10/51	17/11/51 28/1/52	9/2/52 9/2/52	11/2
Shri R.H. Wakhund.	2/11/50	17/2/51	9/2/52	11/2
Shri P.B. Kotagi.	10/8/51 15/8/51	25/11/52 30/11/51	9/2/52 9/2/52	11/2
Shri B.S. Miradi	15/8/51 10/10/51	30/11/52 29/1/52	9/2/52 9/2/52	11/2

The L.S.G. & P.H.D. considers that there was no arrears of any tax due from the candidates on the date of the nomination and as such the rejection of the nomination was not proper. That Deptt. therefore proposes to cancel the orders passed by the Prant Officer.

Officer and to ask the Collector to notify fresh date for the election (i.e. the poll only) taking the states upto now reached as valid. The R.L.A. is requested to advise.

Id/-

5/9.

D.S. (Civil) Reply may be :--

Seen and returned.

The view taken by the L.S.G. & P.H. Dept.
is correct.

Id/- R.T.K.

5/9.

R.L.A.

Id/-

5/9.

U.R. to L.S.G. & P.H.D. No. 14557 dated 7th September 52.

OFFICE OF THE R.L.A.

**Nomination
Identity of
candidate**

**Bombay
Village
Panchayat
Act, 1933:
sec. 9(1).**

"The object to be kept in view in filling up nomination paper is that the person who sees the nomination paper may be ~~able~~ able to decide whether the candidate is properly nominated or assented to by enrolled burgesses and to determine it is by a mere comparison of the nomination paper and burgess roll without any further and laborious enquiry" (Aligarh West Case: Khanna's Election cases Vol. II p.'). In the present case the entry in the Voters' List originally read as "Shamsuddin" while the nomination paper was subscribed as "Shamsuddin Mahibubbhai" and the full name of the candidate has been described in the nomination paper as "Shamsuddin Mahibubbhai Shikilkar". The surname "Shikilkar" does not appear even in the corrected roll and therefore the question whether the alleged amendment is genuine loses much of its significance. "However misdescription in the register does not disqualify the identity of the person whose name is entered can be satisfactorily established. In a nutshell the law is that if a person on the register is called by a wrong name that will not vitiate his vote provided there is no doubt as to the person in question being the one whose name appears on the electoral register. (Oldham (1962) I.O.M. & H.153) Under the same principle if there is no doubt as to the identity of the candidate his nomination paper cannot be rejected." (See Law of Elections in India and Burma: by Khanna p. 25). Therefore if as stated by the Collector there is only one person of the name "Shamsuddin" in the Chakan Village and his identity can be ~~xxx~~ easily proved as the one originally entered in the Voter's list, no objection can be taken to the acceptance of his nomination paper. No action is therefore called for under section 9(1)

of the Bombay Village Panchayats Act, 1933.

Id/-

8/9.

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No. 14720/A, dated the

10th September 1952.

Office of the R.L.A.

R.L.A. is requested to advise whether under the existing Village Panchayat Rules for the levy of a tax on brokers or Dalals in cattle Markets, a tax can be levied on a dealer in cattle even though he is not a broker or Dalal and if not, whether the attestation fee referred to in the Village Panchayat Rules for the levy of a tax on brokers or dalals can be charged to the sellers., or dealers in cattle when there are no brokers or dalals.

54

2. The Village Panchayat Rules for the levy of a tax on brokers or dalals in cattle markets provide for the levy of a tax on brokers. A dealer is different from a broker or a dalal. (See rule 2(1) of the Rules). Evidently therefore under these Rules no tax can be levied on a dealer. Rule 3 of the Rules provides: The Panchayat shall attest the sale transaction between the parties by means of a receipt and recover the attestation charges from the seller, as shown in schedule and no other person shall pass such receipt except the Secretary or other person duly authorised by the Panchayat. Since the power to attest a sale transaction vests only in the Panchayat, it is immaterial whether the sale transaction is effected directly ~~between~~ between the seller or buyer or through a broker or dalal. Consequently, even though the sale of cattle is effected otherwise than through a broker or dalal, it would be competent ~~management~~ for the panchayat to levy the attestation fee under rule 3.

14/-
24/8

Remembrancer of Legal Affairs

U.R. to L.D.G. & P.H.D. No. 18908, dated the

25th August 1952.

Office of the R.L.A.

It appears that the Village Panchayat, Salej, started functioning from 25th April 1950 and took steps to levy the taxes from 1st October 1950. The question raised for the R.L.A.'s consideration is whether the full grant of 15 per cent of the land revenue has to be given to that village panchayat under section 92A of the Bombay Village Panchayats Act, 1933.

Section 92A of the Bombay Village Panchayats Act, 1933, provides that the State Government shall make every year a grant to every panchayat levying the taxes under sub-sections (1) and (2A) of section 89 equivalent in amount to fifteen per cent of the ordinary ~~tax~~ land revenue or twenty-five per cent of the local fund cess, realised in the previous year within the limits of the village, whichever is greater. It is apparent that this provision is mandatory and the only condition is that the panchayat should have levied the taxes under sub-sections (1) and (2A) of section 89. This condition having been fulfilled by the Salej Village Panchayat, it is entitled to the full contribution under section 92A. The fact that the village panchayat levied the taxes under sub-sections (1) and (2A) of section 89 with effect from 1st October 1950, that is to say, for a part of a year, would make no difference to the legal ¹ position.

Id/-

17/9.

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D., No. 15330/A, dated the

18th September 1952.

MER.
19/6.

Office of the R.L.A.

Bombay Village
Panchayats Act,
1933.
Section 6(1)

 Disproportionate
 representation.

under section 6(1) of the Bombay Village Panchayats Act, 1933, seats can be reserved to secure representation of the Scheduled castes and Scheduled Tribes. The number of seats to be reserved under this provision should ordinarily be proportionate to the population of the Scheduled Castes and Scheduled Tribes. In the present case two seats have been reserved for the Schedules Castes and Scheduled Tribes, the adult population of which appears to be 15 only. Consequently, the reservation of two seats for the Scheduled Castes and Scheduled Tribes would be disproportionately high and improper. However, such reservation could not be considered as illegal. R.L.A.'s opinion No.7812 dated 9th May 1952 has no application to the present case as in that case seats were reserved when there was no population of Scheduled Castes and Scheduled Tribes and as such the reservation was in its inception illegal. In these circumstances, the members who have been already elected to the two reserved seats should be allowed to continue and the course proposed by the Collector in para. 7 of his letter dated 5th May 1952 followed.

14/-

15/9.

Rememberance of Legal Affairs.

U.R. to L.S.G. & P.H.D., No. 15166/A, dated the

16th September 1952.

MSR.
 19/6.

Office of the R.L.A.

Bom. Village Panchayats Act, 1933
Sects. 4(2) (b) and 105(b).

Arrears of taxes
of a denotified
village panchayat recovery of-
.....

It appears that the local area comprised in Deolali Village Panchayat has been declared to have ceased to be a village by a notification issued under section 4(2)(b) of the Bombay Village Panchayats Act and some arrears of taxes levied by the panchayat are still outstanding. The Director of Local Authorities, C.D., considers that, if these arrears can be considered as unexpended balance of the village fund within the meaning of section 105, the recovery can be effected under sub-section (6) of section 91, but if they are treated as assets of the forthcoming municipality that is to be established for that area, it will be the duty of the municipality to recover it. R.L.A. is requested to advise whether arrears of taxes can be considered as unexpended balance of the village fund and, if not, whether they form part of the assets of the forthcoming municipality.

Under section 105(b) of the Bombay Village Panchayats Act, 1933, on any area ceasing to be a village by virtue of any notification under section 4, the unexpended balance of the village fund and the property vesting in the panchayat shall vest in the District Local Board to be utilised for the benefit of inhabitants of the area as the District Local Board may think fit. The arrears of taxes cannot be considered as unexpended balance of the village fund as such arrears do not form part of the village fund unless they are recovered. They cannot also be considered as the property vesting in the panchayat for "property" means property as contemplated by section 29. In this connection attention is

invited to R.L.A's opinion No.10047, dated the 16th June 1952. The municipality that is to be established for the area cannot claim the property of the denotified panchayat as the property thereof after its dissolution vests in the District Local Board. Unless the Act is amended properly it would not be possible to recover by any authority the arrears of taxes due to the dissolved panchayat.

Id/-

19/6.

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.B.D. No. 10283 dated the

20th June 1952.

MSR.
19/6.

Office of the R.L.A.

Bombay Village
Panchayats Act,
1933.
Sect. 110(1).

Misappropriation
subsequent to
disqualification
of the Sarpanch.

It is true that Shri S.B. Patil, Sarpanch of the Hallur Village Panchayat has incurred a disqualification by absenting himself from the meetings during the prescribed period and the Secretary of the Village Panchayat misappropriated the amount of Rs.1331-5-0 subsequent to the disqualification of Shri S.B. Patil; but under section 110 sub-section (1) of the Bombay Village Panchayats Act, 1933, to hold a member of a Panchayat liable for the loss, waste or misappropriation of any money or other property of the Panchayat, itw could be sufficient even if the misappropriation has been facilitated by his gross neglect of duty. The Collector of Bijapur in his order dated 18th July 1951 has clearly stated that the loss or misappropriation of Rs. 1331-5-0 was a direct consequence of the gross neglect of the duty on the part of the Sarpanch inasmuch as he allowed the late Secretary to keep more than Rs.50/- with him in contravention of the rules and in allowing the Secretary to sign the cheques and cash them without his knowledge. It would, therefore, be apparent that even though the misappropriation of the money of the Panchayat was committed by the said late Secretary after Shri S.B. Patil, Sarpanch of the Panchayat, was disqualified to be a member, still the misappropriation would not have been possible if Shri S.B. Patil had not allowed the Secretary to contravene the rules, in which contravention he persisted later on. Further it may also be noted that Shri S.B. Patil, notwithstanding his disqualification, continued to discharge his duties as Sarpanch by submitting reports to the higher authorities and by attending to other work of the Village Panchayat. This conduct of his would militate against the view that he could not be responsible for the neglect which

facilitated the misappropriation committed during the period of his disqualification. In these circumstances there is sufficient justification for holding that the misappropriation was facilitated by the gross neglect of his duty by Shri S.B. Patil. The Collector's order, therefore, appears to be correct.

14/-

1/7

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D., No. 10862, dated the
1st July 1952.

MSR.
19/8.

Office of the R.L.A.

In this case the order of disqualification under section 9A of the Bombay Village Panchayats Act, 1933, was passed by the Prant Officer, Madha Division, on 29th October 1951. Therefore, as stated in R.L.A.'s opinion No.303, dated the 11th January 1952 the notice under the proviso to section 23(1) would not be necessary and the date relevant for the purpose of holding the by-election and making the appointment by the District Local Board would be the date of that order. The elections for the vacancies caused by the disqualification of the members could not be held within a period of four weeks from the date of that order and the D.L.B.Sholapur also failed to make the necessary appointments within the next four weeks. That being so, the proper course was for the Collector to make the appointments. Instead, the Prant Officer himself invited the D.L.B.Sholapur after a lapse of fourteen weeks to make the appointments, and it is upon that invitation that the appointments were made by the Board on 15th February 1952. It is no doubt true that the appointments were not made by the D.L.B within the prescribed period. But since the appointments were made at the instance of the Prant Officer and the persons so appointed have now been in de facto possession of office, they must be presumed to be rightly in possession until the contrary is established by due course of law, i.e., in a court of law. See R.L.A.'s opinion No. 10253, dated 31st October 1948. Moreover, no question of disqualification of Shri S.D. Patil arises in connection with the appointment, because it appears from the papers that the disqualification under section 8(1) of the Bombay Village Panchayats Act, 1933, ceased to

attach to him, and he had not incurred any similar disqualification thereafter, so that he was qualified for election and, therefore, for appointment.

Id/-

27/10

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No. 17855/A, dated the
28th October 1952.

YSR.
19/6.

21532
18/9/52.

S.A.S.

The question for R.L.A.'s consideration is whether under clause (f) of section 26A(1) of the Bombay Village Panchayats Act, 1933, it would be legally competent for a village panchayat to provide from its fund for filling of cattle troughs.

Under section 22 of the Bombay Village Panchayats Act, 1933, all property vested in the panchayat under section 28B and 30 and all the funds received by it in accordance with the provisions of section 31 and all sums accruing to it under the provisions of any law for the time being in force shall be applied subject to the provisions and for the purposes of the Act. Section 26 provides for the obligatory powers and duties in respect of which a village panchayat is required to make adequate provision so far as the village funds allow. While section 26A provides for the discretionary powers and duties of the panchayat. Under clause (f) of sub-section (1) of section 26A, it is competent to a panchayat, so far as, the village fund at its disposal will allow to make provision for improvement of cattle and their breeding and the general care of the live-stock. When during summer scarcity of water is felt for the live-stock, with a view to preservation and improvement of the cattle wealth of the village community it would be legally competent for the village panchayat under section 26A (1)(f) to make reasonable provision from the village fund for filling of cattle troughs within the village.

14/-
25/10.

The view taken by the L.S.G. & P.H. Dept. is correct. The provision for water will tend to the general care of the live-stock within the meaning of section 26A (1)(f) of the Bom. V. P. Act, 1933 and there would be no legal objection to advising the Panchayats to see that cattle troughs in their areas are duly filled in, provided their funds permit.

D.S. (Civil) Id/- R.T.F.
29/10.

R.L.A. Id/-
29/10.

18081/A
U.R. to L.S.G. & P.H.D. No. 18081/A dt. 31/10/52.

MBR.
19/6.

L.D.R.I. No. 26486
dt/ 4-11-52.

Submitted with reference to the note of the L.S.G. & P.H.D. at p. 131 ante.

The Director of Local Authorities, S.D. Belgaum in his letter dated 16/17th July 1952 at p. 163 ante writes as under :-

"No circular with regard to the contributions to the libraries by village Panchayats has been issued Govt. Circular, L.S.G. & P.H.D. No. 547/33, dated the 20th March 1952 has held Municipalities to be competent to contribute towards libraries. Section 26-A of the Bombay Village Panchayats, 1933, only permits village Panchayats to "make suitable provision in ~~xxxx~~ regard to Village libraries and reading rooms." The tenor of the section appears to be that the services mentioned in it are to be run by or under the control and direction of the Panchayat. The question ^raised is whether it would be legal for a Village Panchayat to contribute to the maintenance of library within its jurisdiction, provided it has a voice in its management though not complete control over it."

The Office of the L.S.G. & P.H.D. has commented on the above at p. 177 ante as under :-

Under Section 26A of the B.V.P. Act, 1933 Village Panchayat can make reasonable provision within the village in ~~xxxx~~ regard to village libraries and reading rooms. It therefore appears that a Village Panchayat can make a contribution towards a library or reading room in the village under section 26-A of the Act. However as doubt has been expressed by the D.L.A., S.D. at p. 163, the R.L.A. may be consulted

on this point. The L.S.G. & P.H.D. says at p. 187 ante that it appears that a Village^a Panchayat can contribute under section 26-A of the Village Panchayat Act, 1933 to the maintenance of a library within its jurisdiction provided it has a voice in its management and draws attention to the R.L.A.'s opinion No. 17249 dt/ 1-11-1951 and requests the R.L.A. to confirm this view.

Id/-

7/11/52.

D.S. (Civil)

Seen and returned.

The view taken by the L.S.G. & P.H. Dept
is correct.

Id/- R.T.K.

8/11.

U.R. to L.S.G. & P.H.D. No. 18741/A
11/11/52.

MSR
19/6.

Slip
A

The view of the Under Secretary, L.S.G. & P.H.D. is that according to the definition of the word "ship" as given in Rule 51, the Carpenters, Blacksmiths, Tailors, Masseurs, Butchers, Tanners, Shoe-makers, selling goods or rendering services to customers are liable to pay tax on shops.

Washerman if they render any services at their house and and charge thereof will also be liable to tax.

The papers have been sent to the R.L.A. for an authoritative opinion in the matter.

I.D.:R.L. No. 27939 dt. 19/11/51

Submitted with reference to the notes of the L.S.G. & P.H.D. at pp. 47-50 ante.

For the facts of the case please see the letter dated 8-11-1951 of the Collector of Surat at p. 25 ante.

The question raised for the consideration of the R.L.A. is whether tax can be levied on the under mentioned businessmen in the village by the Village Panchayat under section 89(2) (via) of the Bombay Village Panchayats Act, 1933.

- (1) Carpenters
- (2) Blacksmiths
- (3) Tailors
- (4) Washermen
- (5) Passengers
- (6) Butchers
- (7) Tanners
- (8) Shoe-makers
- (9) Hawkers

— Insert Slip. 'A' here

The view taken by the L.S.G & P.H.Dept. is correct. The definition of "Shop" in rule 51(1) of the Bom. V. P. Tax & Fees Rules, 1944 is very wide and it clearly supports the view.

Id/- R.T.K.

28/11.

R.L.A.

Id/-

28/11

U.R. to L.S.G. & P.H.D. No. 20161/A
2/12/52.

Office of the R.L.A.

In the Punjab North case Indian Election Petitions Vol. II page 138, it was held : "The view taken in Stepney case (4 O.M. and H 37) that a circle against the name of the candidate in a ballot paper is a bad mark is not sound at any rate in India. Rules only say that the voter is to make a sign of cross (x) or plus (). It is nowhere provided that if the voter puts any other mark the vote would be bad." (See Jagat Narain on Law of Elections and Election Petitions p. 349). Rule 22, sub-rule (5) of the Bombay Village Panchayat Election Rules 1948, provides: "the voter shall mark a cross (X) in column 4 of the voting paper against the name of each candidate to whom he intends to give a vote. He shall then fold up the marked paper so as to conceal the marking and shall put the paper so folded into the ballot box and without undue delay leave the polling room." There is no provision in these rules that if the voter puts any mark other than a cross (X) on the ballot paper the vote would be bad. Consequently, there would be no legal objection to accepting the ballot paper as valid if it bears any mark other than that of a cross (X) provided it is good enough in other respects. The view taken by the Director of Local Authorities, S.D. is correct.

Id/-

24/10.

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D.No. 17698/A

dated the 25th October 1952.

MSB.
19/6.

Office of the R.L.A.

Bom. Village
Panchayats
Act, 1933.

Section 9(1)

Village Pancha-
yat Talegaon.

It appears that in conducting the general election to the village panchayat Talegaon during March-April 1952 the following irregularities were committed, viz:

(1) that the Mamlatdar (who was presumably the Returning Officer) delegated to the Treasury Head Karkam the authority to scrutinize the nomination papers and the latter scrutinized the nomination papers sometime after 6 P.M. on the 7th March 1952 after candidates who had attended the Taluka Office for being present at the scrutiny had left that office;

(2) that the number of wards for the election of members which was fixed at four by the Prant Officer was unauthorisedly changed by the Returning Officer to three; and consequent on this change the lists of voters of wards which showed separately the voters of the four different wards were combined and condensed into three.

The R.L.A. is requested to advise whether these irregularities are substantial so as to vitiate the constitution of the Panchayat.

2. Rule 10 sub-rule (1) of the Bombay Village Panchayats Election Rules, 1948 provides that at the time and date fixed for the scrutiny of nominations the intending candidates and one person duly authorised in this behalf by such candidates, shall alone be entitled to be present and that the Returning Officer shall allow such persons reasonable facilities for examining the applications of intending candidates. It is clear from this provision that the intending candidates or persons duly authorised by them have

a right to be present at the time of the scrutiny of the nomination papers and that it is the duty of the Returning Officer personally to scrutinize the nomination papers. In the present case an apparent irregularity has been committed inasmuch as the nomination papers were scrutinized not by the Returning Officer but by the Treasury Head Karkun who had no authority to do so. The scrutiny was made after 6 P.M. i.e. after office hours and could not presumably be at the hour fixed in this behalf, which has resulted in depriving the candidates of their right to be present at ~~xx~~ that time.

3. A village panchayat has to be constituted in accordance with the Act and Rules made thereunder. By G.N.H & L.G.D. No.2565/33, dated the 20th January 1948 the power of Government to make rules under section 108 sub-section (1) clause (b) of the Bombay Village Panchayats Act, 1933 in so far as it relates to the constitution for each panchayat of wards for election of members has been delegated to all Collectors. In exercise of this power presumably the Collector of Ratnagiri made a rule fixing four wards for the election of the village panchayat Talegaon and this rule was duly published in the Official Gazette. The power to amend, vary or modify this rule would vest in the Collector (cf. section 21 of the Bombay General Clauses Act, 1904). What the Mamlatdar (Returning Officer) purported to do by dividing the village panchayat area into three wards instead of four as was determined under rule was to amend the rule, which was not competent to him to do. The election to the Village Panchayat Talegaon thus being in contravention of

the prescribed constitution would be clearly illegal. It cannot be considered as a village panchayat ~~constituted~~ constituted under the Act and can have no power to function under the Act. The Collector may therefore be directed to set aside the election under section 9(1) of the Act and to proceed to hold fresh election as soon as possible.

Id/-

19/12.

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D.No. 21523/A, dated the

20th December 1952.

with G.R.No.2565/33 dt. 20/1/48.

MSR.
19/6.